SUPREME COURT, U.S.
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Case No. 09- 1250

IN THE

SUPREME COURT OF THE UNITED STATES

RICHARD I. FINE,
Petitioner,

v.

SHERIFF OF LOS ANGELES COUNTY,
Respondent.

On Petition for Writ of Habeas Corpus
to the Ninth Circuit Court of Appeals

PETITION FOR REHEARING ON PETITION FOR WRIT OF CERTIORARI

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Opinions Below

- Report and Recommendation of Magistrate Judge (denying writ of habeas corpus), dated June 12, 2009; (USDC Dkt 26)
- Order Accepting Report and Recommendation of Magistrate Judge dated June 29, 2009; (USDC Dkt 30)
- Memorandum of Decision – "not appropriate for publication and is not precedent except is provided by 9th Cir. R. 36-3" -- dated December 16, 2009, by Circuit Judges Reinhardt, Trott and Wardlaw; (9th Cir. Dkt 59)
- Order (Denying Petition for Rehearing and Rehearing En Banc), dated February 10, 2010, by Circuit Judges Reinhardt, Trott and Wardlaw; (9th Cir. Dkt 66)
- Order Denying Petitioner's 28 U.S.C. § 455(a) Motion to Disqualify Judges Reinhardt, Trott and Wardlaw and Void All Orders, filed February 3, 2010, dated February 12, 2010 by Circuit Judges Reinhardt, Trott and Wardlaw. (9th Cir. Dkt 68)

Statement of Subject Matter Jurisdiction

Subject matter jurisdiction in the District Court is based upon 28 U.S.C. § 2254. The appeal is from the final judgment ("Memorandum") of the Ninth Circuit issued on December 16, 2009 (9th Cir. Dkt 59), followed by the Ninth Circuit's denial on February 10, 2010 of Petitioner's Request for an En Banc Hearing (9th Cir. Dkt 66).

Statutory Provisions Involved

- California Constitution, Art. VI, Sec.19
- California Code of Civil Procedure § 170.1
- California Code of Judicial Ethics – Canons 2, 3E and 4D(1)
- California Senate Bill SBX2 11, partially codified as California Gov't. Code Sections 68220 – 68222
- United States Constitution - First, Fifth and Fourteenth Amendments
- 28 U.S.C. § 2254

I. A Rehearing is Necessary.

On May 24, 2010, after this Court's Order of Denial of the Petition for Writ of Certiorari was made public, Los Angeles Superior Court Judge David P. Yaffe's deputy clerk informed Petitioner (hereinafter "Fine") that a hearing scheduled for May 26, 2010 to determine if Fine would be released from "coercive confinement" in the event that the Supreme Court denied the Petition, would not occur ... ever. Judge Yaffe had thus denied Fine his right to access to the Court and effectively sentenced Fine to "life imprisonment" without due process.

This heretofore-unknown fact mandates a rehearing as it places an entirely different "complexion" on the case. A case of "coercive confinement," which can be ended by a "*Farr* hearing," has now become a case of life imprisonment, a clear violation of due process which mandates the granting of a Writ of Habeas Corpus, or the remand to the District Court for a hearing on whether Fine should be released.

A second reason for a rehearing is that this Court did not realize that, by denying the petition for Writ of Certiorari, the Court was eliminating the right to a fair trial by an impartial judge and thereby removing the bulwark of the American judicial system and a primary reason for the Declaration of Independence.

The third reason for a rehearing is that the Ninth Circuit's refusal to follow established Supreme Court precedent regarding payments to judges by parties appearing before them will now be cited under Fed.R.App.Proc. Rule 32.1 as the new test for due process.

The result of these actions is that the United States is no longer governed by the "Rule of Law," the judiciary has been allowed to be "bought," judges who have received retroactive immunity from criminal prosecution for having engaged in unconstitutional and criminal acts while judges are still presiding as judges in the same courts, "bribes" and a "judge judging his own actions" are acceptable conduct by the judiciary, and the doctrine of "fraud upon the court" used to void the orders in cases of "extrinsic fraud" is no longer applicable to judges who take payments from parties in cases over which the judges preside.

II. Argument

A. New Actions by L.A. Superior Court Judge David P. Yaffe Mandate a Rehearing.

On May 21, 2010, Fine filed a "Notice of *Farr* Hearing" set for May 26, 2010 in Dept. 86 of the L.A. Superior Court in the event that the U.S. Supreme Court denied Fine's Petition for Writ of Certiorari. Judge Yaffe refused to hold

the hearing. This was the second denial of due process, thereby keeping Fine unlawfully confined.

Confinement beyond the time that bears a reasonable relationship to the purpose for which the person is committed is a denial of due process. (See *Jackson v. Indiana*, 406 US 715 (1972); *McNeil v. Director, Patuxent Institution*, 407 US 245 (1972).)

The purpose of the *Farr* hearing was to obtain Fine's release from "coercive confinement" on the grounds that the Order of "coercive confinement" had not accomplished its purpose, had become "penal," and thus subject to the five-day limit of incarceration under California Code of Civil Procedure § 1218.

Fine had earlier filed a "Demand For Immediate Release" on January 27, 2010, showing that the coercion had not worked. Judge Yaffe filed a "Court's Response To Contemnor's Demand For Immediate Release From L.A. County Jail And Other Relief" on February 3, 2010, stating in relevant part:

> "When Fine notifies the court, by a declaration under penalty of perjury, that he has exhausted or abandoned his quest for a Writ of Habeas Corpus, this court will set a hearing to determine whether Fine will answer the questions put to him and if not, why not. "

On February 3, 2010, Judge Yaffe denied Fine due process by denying him a *Farr* hearing while knowing that the coercion was not working and was not serving the purpose of the Order.

On March 25, 2010, Fine filed a "declaration" under penalty of perjury stating that he would not answer the questions, giving the reasons therefore and showing that the Order of "coercive confinement" did not serve its purpose from its outset of March 4, 2009.

Thereafter, despite the statement in the Court's February 3, 2010, response, neither Judge Yaffe nor the L.A. Superior Court allowed the May 26, 2010 *Farr* Hearing to occur.

Fine has now been condemned to a life sentence of "coercive confinement" in the L.A. County Jail with no opportunity of a court hearing.

B. The Elimination of the Right to a Fair Trial Presided Over by an Impartial Judge and/or a Judge Who is Not "Judging His Own Actions" or Engaging in "Obstruction of Justice" Mandates a Rehearing.

1. Denial of the Petition Unlawfully Validated the Void Orders of Judge Yaffe Due to His Extrinsic "Fraud on the Court".

By taking payments from L.A. County and not disclosing such and then presiding over a

case in which L.A. County was a party while still taking payments from L.A. County and not disclosing such, Judge Yaffe committed extrinsic "fraud upon the court". This extrinsic fraud was further bolstered by the conduct of L.A. County and its attorneys, who also did not disclose the L.A. County payments made to Judge Yaffe. The first disclosure only occurred ten months after the case was filed when Judge Yaffe admitted to taking the L.A. County payments upon being questioned by Fine.

All of Judge Yaffe's orders were void. Extrinsic fraud is a basis for setting aside an earlier judgment. See *U.S. v. Throckmorton*, 98 U.S. 61 (1878) – since "fraud on the court" vitiates the entire case, all orders from that court or any subsequent court are void as none of the courts had subject matter jurisdiction. No court has the lawful authority to validate a void order. See *Valley v. Northern Fire and Marine Co.*, 254 U.S. 348 (1920) – a void order is void at all times, cannot be made valid by any judge, nor does it gain validity by the passage of time. The order is void *ab initio*.

The record in this case shows that the U.S. District Court rejected Supreme Court precedent of the judges who took county payments as having committed a "fraud upon the court." The Report and Recommendation of the United States Magistrate Judge, adopted by the District Court, states at page 18, lines 1-5, and Footnote 1 as follows:

> "There is no basis in law for petitioner's contention that all judges who have ever received these county provided benefits must be precluded, as necessarily biased, from participating in cases in which the county in question is a party. "
>
> Fn 1. "On petitioner's logic, one might well argue that all state judges should be precluded from hearing cases involving the states, and that all federal judges should be precluded from hearing cases involving the Federal Government."

From these statements, it is clear that the Magistrate Judge and the District Court did not comprehend that state-elected superior court judges are state constitutional officers and are not county employees, nor is their compensation "prescribed" or paid by the county, as required. Constitutionally, state and federal judges are part of a branch of the respective government, employees of the respective state and federal sovereigns, their compensation is set and paid by the respective state and federal sovereign government, and they serve with the permission of the respective sovereign government.

This violation of U.S. Supreme Court precedent by the Magistrate Judge and the District Court Judge unlawfully converted the void acts of Judge Yaffe, who was not truly or

legally the judge in the *Marina Strand* case, into "valid" acts.

The Ninth Circuit blindly accepted the unlawful conversion. It first affirmed the purported District Court's decision that it was proper for Judge Yaffe, acting as a judge in the contempt proceeding, to "judge his own actions." As pointed out in the Petition for Writ of Certiorari, the Magistrate Judge and the District Court never made such a decision. In fact, the Magistrate Judge and the District Court never even addressed the issue of Judge Yaffe "judging his own actions," even though such issue was raised in the Petition for Writ of Habeas Corpus.

The unlawful action of making valid the void action of Judge Yaffe acting as a judge formed the basis for the Ninth Circuit's decision that the L.A. County payments to Judge Yaffe did not violate due process and the decision that Judge Yaffe was not "embroiled" with Fine.

The Ninth Circuit unlawfully ratified the unlawful actions of the Magistrate Judge and the District Court, which validated the void orders of Judge Yaffe.

The denial of the Petition for Writ of Certiorari has further validated the void actions of Judge Yaffe and, by doing so, has effectively reversed over 130 years of U.S. Supreme Court precedent. (See *U.S. v. Throckmorton*, 98 U.S. 61 (1878); *Valley v. Northern Fire and Marine Co.*, 254 U.S. 348 (1920).)

Under F.R.A.P Rule 32.1, the Ninth Circuit's "Memorandum" opinion may be cited irrespective of the Ninth Circuit's designation of "not for publication and not precedent except as provided by 9th Cir. R. 36-3." The denial of the petition makes the "Memorandum" the final opinion on the subjects decided therein.

2. The Denial of the Petition Eliminated the Prohibition Against a "Judge Judging His Own Actions".

By denying the Petition, the Supreme Court eliminated the prohibition against "a judge judging his own actions" as set forth in *In Re Murchison*, 349 U.S. 133, 136 (1955), cited in *Caperton v. A.T. Massey Coal Co., Inc.*, 566 U.S. ___ (2009) Slip Opinion page 10.

The Ninth Circuit "Memorandum" stated:

> 'The District Court correctly concluded that Los Angeles Superior Court Judge Yaffe's refusal to recuse himself from Fine's contempt proceedings was not 'contrary to, or involved an unreasonable application of clearly established federal law' or an 'unreasonable determination of facts.'"

Irrespective of the fact that the District Court did not even address the issue, much less make the conclusion, the Ninth Circuit's ruling clearly overturns the prohibition in *Murchison*,

supra, against a "judge judging his own actions."

3. The Denial of the Petition Eliminated the Objective Tests to Determine Bias of a Judge.

Judge Yaffe and all of the state-elected judges of the L.A. Superior Court received $46,433 per year, or 27% of their annual salary of $178.800, in addition to their state salary.

The Ninth Circuit "Memorandum" held that the direct payment "did not give [Judge Yaffe] a direct, personal, substantial, pecuniary, interest in the matter."

The objective tests determine if due process has been violated. One test was set forth in *Caperton*, at Slip Opinion page 16, as follows:

> "Just as no man is allowed to judge his own cause, similar fears of bias can arise when – a man chooses a judge in his own cause."

L.A. County "bought the entire L.A. Superior Court." A party opposing L.A. County could not find a judge in the L.A. Superior Court who was not taking L.A. County payments. L.A. County had chosen the judge in their cause without the consent of the other party.

The *Tumey*, infra, test was set forth in *Caperton*, Slip Opinion page 7, as follows:

> "Every procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the state and the accused, denies the latter due process of law. *Tumey v. Ohio*, 273 U.S. 510, 532 (1927)."

The test was modified for civil cases.

The Ninth Circuit "Memorandum" did not even address the issue of bribes, yet it was raised in the briefs. In the case of *Offutt v. United States*, 348 U.S. 11, 14 (1954), the Court stated:

> "A judge receiving a bribe from an interested party over which he is presiding does not give the appearance of justice."

Given Judge Yaffe's actions of not invalidating the Environmental Impact Report ("EIR") after he became aware that the certification was false and unlawful, there was no doubt that the L.A. County payments to him were "bribes." The payments were given to influence his conduct, which they did.

The denial of the Petition leaves the Ninth Circuit "Memorandum" as the decision, which has eliminated all of the objective tests, thereby eliminating the right to a fair trial by an impartial judge.

4. The Denial of the Petition Does Not Consider Judge Yaffe's Continued Violations of Law to be Embroilment.

Judge Yaffe violated the constitutional requirement for notice and to be present at a hearing, and the California Public Resources Code regarding the January 8, 2008 Order, Cal. Code of Civ. Proc. §§ 170.3(c)(4) and 1211 prior to the commencement of the contempt proceeding.

These actions showed a "running controversy" with Fine and an embroilment with him over an eleven-month time period.

The denial of the Petition did not follow the criteria of *Taylor v. Hayes*, 418 U.S. 489, 501 (1974) – a judge who has "become embroiled in a running controversy" with the defendant could not subsequently preside over that defendant's criminal contempt trial.

C. The Denial of the Petition Has Reversed the Standard of Due Process.

The Ninth Circuit's decision overturned long-standing Supreme Court precedents prohibiting "fraud upon the court", a judge "judging his own actions", a judge accepting payments from a party appearing (or likely to appear) before him, a party being denied the right to an impartial judge judging his case, and

"bribery". The denial of the Petition has made the Ninth Circuit decision the new law of "due process".

This transformation occurred through the operation of F.R.A.P Rule 32.1, which allows the Ninth Circuit decision to be cited irrespective of the Ninth Circuit designation of "not for publication and not precedent except as provided by 9th Cir. R. 36-3."

The Ninth Circuit's attempt to make its decision affect only one person was "trumped" by the policy behind F.R.A.P Rule 32.1, which operated to stop such particularized decision-making by the Courts.

The denial of the Petition "inadvertently" had the effect of overturning Common Law precedent prohibiting a judge from judging his own actions, law which has existed since the Sixteenth Century; Supreme Court precedent prohibiting a judge from taking payments from a party appearing before him, law which has existed since 1927; and the prohibition of committing "fraud on the court", relates to laws existing as far back as 1878.

The Ninth Circuit Court evidently decided to engage in "cronyism" to protect its judicial brethren who had committed "fraud upon the court" and the criminal act of taking money from a party which was appearing before them. The Ninth Circuit made a decision to overthrow Supreme Court precedent and tried to limit it to only the case herein in which Fine had been

fighting this judicial corruption for approximately ten (10) years.

By denying the Petition, the Supreme Court has inadvertently adopted the Ninth Circuit's actions to protect the wrongful actions of the judges.

The result of the denial of the Petition is the removal of the "Rule of Law" in the area of due process. The American people are now subject to having their cases presided over by judges whom they have not selected, who have taken bribes, and who have taken payments from parties appearing before them.

The denial of the Petition has removed the ability of the American people to successfully challenge these actions, inasmuch as the Supreme Court has upheld this conduct.

A rehearing and granting of the Writ of Habeas Corpus is now the only method available to restore the Rule of Law and integrity to the American judicial system.

Conclusion

This Court's denial of the Petition for Writ of Certiorari has emboldened Judge Yaffe to further violate the Constitution by denying Fine access to the Superior Court, denying Fine a hearing to be released from the unlawful "coercive confinement" and to effectively sentence Fine to life imprisonment without due process.

The denial of the Petition is a decision to protect corrupt judges at the expense of the People's constitutional rights. No factual basis or legal precedent exists for the denial.

If the "Rule of Law" and the integrity of the U.S. judicial system and judiciary is to be restored, a rehearing must be granted, the Ninth Circuit must be ordered to order the District Court to grant the Writ of Habeas Corpus, or the Writ of Certiorari must be granted and an immediate stay of execution of sentence ordered with a release for Fine. The Court is also requested to immediately direct the District Court to hold a hearing to release Fine while the instant Petition is being considered.

Respectfully submitted,

Dated: June 9, 2010

By:

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In Pro Per

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Certificate Of Word Count

As required by Supreme Court Rule 33.1(h), I declare that the Petition for Rehearing on the Writ of Certiorari in the foregoing-captioned case contains 2,786 words, excluding parts of the document that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 9th day of June, 2010.

By: _____
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Certificate Of Good Faith

As required by Supreme Court Rule 44.1, I declare that the Petition for Rehearing on the Writ of Certiorari is limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented and presented in good faith and not for delay.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 9th day of June, 2010.

By: _____
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